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RSPA - 2001-12652-1

Bayer 

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June 20, 2001

Administrator,
Research and Special Programs Administration
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590-001

Petition for Rule Making: Residue Shipments of Hazardous Substances

Dear Sir or Madam:

Problem:

There are a few materials listed in Appendix A of the HMT that do not meet any of the hazard class definitions. When shipped in a single package containing a quantity greater than the reportable quantity (RQ), these materials are subject to the requirements of the HMR. Examples of such products include Adipic Acid and Methylene Diphenyl Diisocyanate (MDI). Bayer Corporation ships a large variety of MDI products in a variety of bulk and non-bulk packagings.

The problem addressed here concerns how containers, used to transport these types of materials, are to be offered for transportation once they have been unloaded to a quantity less than the RQ. For example, a rail car loaded with 185,000 pounds of MDI would ship as a Hazard Class 9 material with the identification number NA 3082 because the car contains more than the reportable quantity of a material that is a hazardous substance, but not a hazardous material. Once the car is unloaded by the consignee and ready for return to the original shipper, the car no longer contains more than the reportable quantity, would no longer be subject to the requirements of the HMR and would ship as a non-regulated container. This requires the waybill to be changed and all placards removed for the return shipment.

On January 31, 1997, Mr. Edward English - Director, Office of Assurance and Compliance issued a memorandum on this subject that was recorded as HM-97-04. Mr. English acknowledged that the HMR would no longer apply under the circumstances cited above and that it was the shipper's responsibility to make a "good faith" effort to determine if the material had been removed to a quantity less than the RQ. A copy of Mr. English's memo is enclosed.

This situation has created a compliance nightmare for shippers, our customers, and the various state and federal enforcement agencies. The railroads are confused because a loaded car is moved into a facility under the HMR, but is offered for the return shipment as a non-regulated car. The HMR clearly states in 49 CFR 173.29(a) that an empty packaging containing only a residue of a hazardous material shall be offered for transportation and transported in the same manner as when it previously contained a greater quantity of that hazardous material. Additionally, 49 CFR 172.514(b) requires each bulk packaging, that is required to be placarded, must remain placarded when it is emptied unless it has been cleaned or re-filled with a non-hazardous material.

Since the few materials that are found in Appendix A, but not in the HMT are only regulated when shipped in a single package containing a quantity equal to or greater than the RQ, the HMR does not apply to the return shipment of these emptied containers and there currently is no specific rule to cover this return shipment. Because the HMR does not clearly address this problem, we spend an enormous amount of time trying to explain to the railroads and various enforcement agencies why a MDI rail car must return as non-regulated when it was originally offered under the HMR.

Recommendations and Proposed Text:

It is our opinion that this confusion could be eliminated by adding a subparagraph, (3) to 49 CFR 172.514(b) and a paragraph, (h) to 49 CFR 173.29 to address the residue of products that are hazardous substances, but not hazardous materials. The latter would be consistent with the manner in which 173.29(g) addresses elevated temperature materials:

i.e. 172.514(b)(3) "Contains the residue of a material solely defined and classed as a hazardous substance."

i.e. 173.29(h) "A packaging that contains a residue of a hazardous substance may be offered for transportation and transported in the same manner as when it originally contained a greater quantity of that hazardous substance provided the material did not meet any other hazard class definition when originally transported."

Benefit:

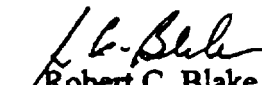
The benefit of this proposed rulemaking would remove confusion and provide continuity to the regulations and their enforcement. It would promote harmony within the total transportation network and would increase safety awareness by communicating the existence of a hazardous substance residue within a package.

Cost:

There would be no additional cost to the transportation of the residue as the return requirements (paperwork, markings and placards) are already in existence from the original shipment.

I would appreciate your expedient consideration of this proposal and should you desire to contact me by e-mail my address is robert.blake.b@bayer.com.

Sincerely,



Robert C. Blake
Senior Manager
Distribution Safety & Services

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Enclosure



Memorandum

U.S. Department
of Transportation

Federal Railroad
Administration

Date: January 31, 1997

Reply to Attn of: HM-97-04

Subject: Residue Shipments of Hazardous Substances


From: Edward R. English
Director, Office of Safety Assurance and Compliance

To: Regional/Deputy Regional Administrators
Railroad Safety Specialists (HM)
Railroad Safety Inspectors (HM)

This memorandum provides FRA's interpretation and guidance for application of the hazardous materials regulations as they pertain to residue shipments of hazardous substances, as defined in 49 CFR 171.8.

When determining whether a residue shipment meets the definition of a Hazardous Substance, the following will apply:

A rail car that contains any material listed in Appendix A to the Hazardous Materials Table (or its mixture) in a quantity greater than or equal to its reportable quantity in one package, is subject to the requirements of the HMR.

A rail car that contains any material listed in Appendix A to the Hazardous Materials Table (or its mixture) in a quantity less than its reportable quantity in one package, and the material neither meets the criteria for any other hazard class in Part 173 of the HMR nor is a hazardous waste or a marine pollutant, is not subject to the requirements of the HMR.

The determination of whether the residue package contains a reportable quantity of a hazardous substance is the responsibility of the shipper. Generally, the shipper is not expected to actually measure the amount remaining after unloading (the heel) but can, in good faith, estimate it by using its knowledge of the material, the packaging, and the unloading method.

** TOTAL PAGE.06 **

If a shipper elects to classify the materials as "Residue, last contained:.....RQ," it may do so even if it was unable to actually determine that the package contained an amount greater than or equal to the reportable quantity. If the shipper makes a good faith, reasonable determination about the presence or absence of a reportable quantity of a hazardous material, the shipper will be deemed to be in compliance.